



## **FACTUAL HISTORY**

On November 1, 2021 appellant, then a 62-year-old retired investigator and inspector, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on June 1, 2008 while in the performance of duty. In a supporting statement, he asserted that in April 2006 he sustained a left rotator cuff tear while doing overhead presses at an employing establishment gymnasium, and in June 2008 he experienced weakness and numbness in his right hand, which he attributed to compressing his forearm and elbow against airplane armrests during assigned flights. Appellant contended that witness statements confirmed the claimed injuries. He retired from the employing establishment in 2014.<sup>2</sup>

Appellant submitted a December 5, 2014 x-ray report, which noted moderate osteoarthritis of the right elbow potentially secondary to remote trauma. He also provided an October 15, 2021 statement by coworker B.D., who recalled that, in 2007 or 2008, appellant had ulnar nerve surgery to address numbness and weakness in his right hand, likely caused by compressing his forearm on airplane armrests. In an October 17, 2021 statement, coworker M.P. recalled that in 2007, appellant stated that he had injured his shoulder while performing shoulder presses in the employing establishment gymnasium. In an October 18, 2021 statement, coworker R.P. asserted that, in 2008, appellant had been concerned about weakness and numbness in his right upper extremity.

In a development letter dated November 9, 2021, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim. OWCP noted that appellant could claim only one injury at a time, and that it would address only the June 1, 2008 right hand injury. It provided a questionnaire and afforded him 30 days to respond.

In response, appellant submitted July 2008 hospital billing documents, which he asserted pertained to ulnar nerve surgery, and a November 17, 2021 report by Dr. Karl Larsen, a Board-certified orthopedic surgeon, noting appellant's right hand weakness and paresthesias.<sup>3</sup>

By decision dated December 10, 2021, OWCP denied appellant's claim, finding that he failed to file a timely claim within the requisite three years under section 8122(a) of FECA (5 U.S.C. § 8122(a)). It found that the date of injury was June 1, 2008 and that he had not filed a claim for compensation until November 1, 2021. OWCP further found that there was no evidence that appellant's immediate supervisor had actual knowledge within 30 days of the date of injury.

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<sup>2</sup> Appellant filed a previous claim under OWCP File No. xxxxxx235 for a left calf injury sustained on November 18, 2003. OWCP processed the claim as a short form closure.

<sup>3</sup> A December 1, 2021 electromyogram/nerve conduction velocity (EMG/NCV) study of the right upper extremity demonstrated severe right ulnar neuropathy at the elbow and mild right median neuropathy at the wrist.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.<sup>6</sup> In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>7</sup>

Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.<sup>8</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>9</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

On his Form CA-1 appellant indicated that his alleged injury occurred on June 1, 2008. He filed his Form CA-1 on November 1, 2021 over 13 years after the alleged date of injury. Because appellant did not file his traumatic injury claim until November 1, 2021, he has filed his claim outside the three-year time limitation.<sup>10</sup>

The Board also finds that there is no evidence of record that appellant's immediate supervisor had actual knowledge, within 30 days of the alleged injury, or that appellant provided

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

<sup>6</sup> *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *R.T.*, Docket No. 18-1590 (issued February 15, 2019); *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

<sup>9</sup> *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

<sup>10</sup> *Supra* note 6.

written notice of injury within 30 days of its occurrence.<sup>11</sup> In his November 1, 2011 letter, appellant asserted that witness statements corroborated the June 1, 2008 right hand injury. While he submitted coworker statements discussing right hand symptoms in 2007 and 2008 and a 2007 shoulder injury, appellant produced no evidence to substantiate that appellant's immediate supervisor was aware of the alleged injury within 30 days of its occurrence or that he submitted written notice within 30 days. In response to the November 9, 2021 development letter, appellant submitted medical reports, which are irrelevant to the timeliness issue. Appellant, therefore, has not met his burden of proof to establish that he timely filed a traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *Supra* note 8.